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19 May 1987

MEMORANDUM FOR: Director of Personnel
Deputy Director for Policy, Analysis &
Evaluation/OP
Chief, Administrative Law Division/OGC

FROM: [redacted] Legislation Division
Office of Congressional Affairs

STAT

SUBJECT: DoD Draft Bill Regarding Civilian Wartime
Benefits

1. Attached for your review and comment is a draft bill proposed by the Department of Defense which is designed to provide certain benefits to civilian employees during wartime. It aims to ensure that essential personnel serving under conditions threatening physical harm or imminent danger are appropriately compensated. For instance, it authorizes payment of a 50 percent premium in salary, reimbursement for medical care for injuries and payment of life insurance proceeds in certain instances.

2. The Office of Management and Budget has asked for our comments by next week. Please relay your remarks to me by 28 May 1987 so that I may respond to OMB in a timely fashion. You may telephone me on [redacted] if you have any questions.

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Attachment

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OCA/LEG [redacted] ks (19 May 87)

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DEPARTMENT OF THE ARMY
WASHINGTON DC 20310

5-6 Rev.
DOD
100-67

Honorable James C. Wright, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed is a draft of legislation "To amend titles 5 and 10, United States Code, to provide incentives for certain essential Defense personnel serving overseas, and for other purposes."

The proposal is a part of the Department of Defense legislative program of the 100th Congress, and the Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Army has been designated the representative of the Department of Defense for this legislation. The Army recommends that the proposal be enacted by the Congress.

Purpose of the Legislation

This proposal would authorize the military departments and Defense Agencies to establish a program to insure that key Department of Defense civilian personnel continue to perform their duties during periods of armed conflict involving United States forces which threaten physical harm or provide imminent danger to their well being. The program is designed to encourage a small number of our civilian Defense employees who hold key positions overseas to stay at their duty post by providing increased pay for their performance and by eliminating disincentives to their staying on the job when all other civilians are evacuated.

As the number of civilians involved in the operation and maintenance of our increasingly complex military systems grows, military commanders must have confidence that key civilians will remain and perform their duties during periods of armed conflict. Historically, civilian employees within the Department of Defense have performed admirably during periods of hostilities. However, to insure that this loyalty and dedication continues, the Department of Defense proposes that incentives be provided to encourage key civilians to remain on duty and that the adverse consequences of their continued performance of duty in a hostile environment be reduced. The draft proposal would:

- 1) Authorize the military departments and Defense Agencies to pay a differential of pay as an incentive to an essential employee on a sliding scale not to exceed 50% of the employee's

basic pay. The amount of the differential pay would be determined by the importance of the position and the degree of threat imposed by the hostilities. However, no additional incentive pay would be authorized in any country until nonessential employees in that country had been ordered to evacuate. Post differentials and danger pay authorized under 5 U.S.C. 5925 and 5928 would supplement this pay, providing additional benefits up to 50% of the employee's basic pay, for a maximum total benefit of up to 100% of the employee's basic pay.

2) Provide for premium pay of one and one-half times a Federal employee's salary for overtime work in lieu of normal overtime pay that is limited to certain grades of civil service.

3) Remove limitations to the accumulation of leave for Federal employees who remain at their job and who otherwise would lose their leave by not taking it.

4) Provide reimbursement for out of pocket expenses necessary for the treatment of injuries sustained as a result of war activities and that are not otherwise covered by existing health care insurance.

5) Provide for the payment by the Government of the proceeds of insurance policies held by essential employees that will not cover combat related deaths because of an exclusion in the policy usually referred to as a "war clause". Contracts of insurance, other than Federal Employees Group Life Insurance, entered into after the date of enactment of this bill are excluded from this provision.

Essential employees would be defined as United States citizen employees of the Department of Defense serving overseas who are in positions determined to be essential and whose continued performance is vital to the security interests of the country. Incentive pay under this proposal would be paid under wartime conditions that provide a threat of physical harm or imminent danger to the person concerned of such an extent that the Secretary or agency head concerned fears the subject employees may leave their posts of duty. The employee would know in advance that the duty to be performed was subject to the incentive program because the employee would acknowledge, in writing, the obligation to stay. These incentives would be used only when there is a need to retain employees on the job in unsafe areas from which other noncombatants would be evacuated.

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Such incentives have ample precedent. For example, members of the uniformed services receive special "hostile fire" pay (37 U.S.C. 310), and certain civilians can receive a danger pay allowance (5 U.S.C. 5928). Secondary insurance coverage to fill the gap for insurance policies with "war clauses" for these key civilian employees provides the peace of mind that if they are killed their families will have financial security.

Cost and Budget Data

The enactment of this proposal will cause no apparent increase in the budgetary requirements of the Department of Defense. The incentive pay will only be an expense in time of grave emergency when these essential employees are needed most.

Sincerely,

Enclosures

A B I L L

To amend titles 5 and 10, United States Code, to provide incentives for certain essential Defense personnel serving overseas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Retention of Oversea Defense Civilian Employees Act."

Sec. 2. Chapter 81 of title 10, United States Code, is amended (a) by adding at the end thereof the following new section:

"51590. Essential employees outside the United States: incentives to remain on duty under wartime conditions

"(a) For the purpose of this section, "essential employee" means a United States citizen Federal employee (to include an employee of the competitive or excepted service) of the Department of Defense paid from appropriated funds--

"(1) who is assigned or detailed to duty outside the United States;

"(2) whose position is determined by the Secretary concerned or person assigned to

supervise a Defense Agency or Department of Defense Field Activity (or their designee) to be essential to the effectiveness of an armed force; and

"(3) who, upon accepting such a position executes a written acknowledgement to remain in the position and perform its duties under wartime conditions that may cause harm to the employee or place the employee in imminent danger.

"(b) Under uniform regulations prescribed by the Secretary of Defense, an essential employee may be paid the incentive and premium pays described in subsections (c) and (d). Regulations implementing such pays shall limit payments to --

"(1) periods in which the essential employee is serving under wartime conditions which threaten physical harm or imminent danger to the health or well being of the essential employee; and

"(2) the Secretary concerned or person assigned to supervise a Defense Agency or Department of Defense Field Activity (or their designee) determines that the continued duty performance of the essential employee is vital to the security interest of the United States.

"(c) An essential employee authorized incentive pay under this section may be paid a pay differential of up to 50 percent of the essential employee's basic pay, depending on the circumstances of the hostilities and the vital necessity for the security of the United States for the continued performance by the essential employee. Incentive pay authorized under this subsection shall be in addition to overseas differentials and allowances authorized under subchapter III of chapter 59, title 5.

"(d) An essential employee authorized premium pay under this section may be paid the premium pay, in lieu of premium pay authorized under subchapter V of chapter 55, title 5, as follows. Pay for an essential employee for hours of work in excess of 40 hours in an administrative workweek, and in excess of 8 hours per day, shall be premium pay and shall be paid at an overtime hourly rate of pay in an amount equal to one and one-half times the hourly rate of the basic pay of the essential employee. Incentive pay authorized under subsection (c) shall not be considered in the computation of premium pay under this subsection. An essential employee may decline the premium pay authorized under this subsection and elect to be paid the premium pay under subchapter V of chapter 55, title 5.

"(e) The provisions of this section shall not apply

to an officer or member of a crew of a vessel excepted from the pay provisions of title 5 by section 5102(c) (8) of that title when the pay of such officer or member is adjusted under section 5348 of title 5 to reflect prevailing rates of pay that are increased as a consequence of the same crisis situation that would provide authority for the incentive provided by this section."; and

(b) the table of sections at the beginning of such chapter is amended by adding after the item relating to section 1589 the following new item:

"1590. Essential employees outside the United States; incentives to remain on duty under wartime conditions.".

Sec. 3. Section 6304(d) (1) of title 5, United States Code, relating to the accumulation of annual leave for civil service employees, is amended by deleting "or" at the end of clause (B), inserting "or" at the end of clause (C), and adding after clause (C) the following new clause--

"(D) a requirement by an authorized official that the employee remain on duty under wartime conditions;".

Sec. 4. Section 8103 of title 5, United States Code, relating to medical services for civil service employees, is amended by adding at the end thereof the following new subsection:

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"(c) The Secretary of Labor shall pay an employee the amounts the employee expends for the treatment of injuries incurred by the employee as a result of war activities occurring during a period the employee is entitled to receive incentive pay authorized in section 1590 of title 10. The Secretary shall make such payments from the Employees' Compensation Fund upon a certification by the Secretary of an armed force or person assigned to supervise a Defense Agency or Department of Defense Field Activity (or their designee) that the payment represents a reimbursement for actual expenditures by the claimant employee for necessary medical care for injuries caused by war activities for which no other program of health insurance was in effect for the employee at the time of the injury."

Sec. 5. (a) The Secretary of the Treasury shall pay the proceeds of a life insurance policy of an essential employee of the Federal government overseas to the beneficiaries of such policy upon the death of the insured employee under circumstances that the insurance policy otherwise would not be applicable because such death was the result of a war related incident under the conditions specified in the second sentence of this subsection and the insurance policy excepted coverage for death under such circumstances. To obtain such payment, the claimant

beneficiaries of the life insurance policy must obtain the certification of the Secretary of an armed force or person assigned to supervise a Defense Agency or Department of Defense Field Activity (or their designee) that the insured person's death was as a result of war related activities and that the insured person was an essential employee who executed an agreement to remain at his duty station or job under wartime conditions.

(b) Payments made pursuant to subsection a, above, shall be from funds of the United States, not otherwise appropriated, and may not be made unless in response to a claim by a beneficiary made to the Secretary of the Treasury within two years of the date of death of the insured or within two years of the termination of the wartime conditions in which the insured was killed, whichever is later.

(c) Payments under this section may be made only incident to contracts of insurance that contain clauses excepting coverage for death resulting from war related occurrences that are entered into by an insurance company and insured prior to the effective date of this Act and otherwise are in effect on the date of death of the insured. The limitations on payments imposed under this subsection shall not apply to payments made incident to coverage under the Federal Employees Group Life Insurance Program for death resulting from war related occurrences.

Sec. 6. The provisions of this Act are effective upon the date of enactment.

Sectional Analysis

Section 1 provides that this act may be cited as the "Retention of Oversea Defense Civilian Employees Act".

Section 2 amends Chapter 81 of title 10, United States Code, to add a new section 1590.

The new section in subsection (a), defines "essential employee for purposes of the section to mean a civil service employee (as defined in title 5, United States Code) of the Department of Defense (to include the military departments and Defense Agencies), who is a citizen of the United States assigned to duty outside of the United States in a position that the Secretary or agency head concerned, or their designee, has determined to be essential to the operational effectiveness of the Armed Forces. It is intended that these positions be truly necessary for the conduct of military operations during times of armed conflict involving United States forces, and not include positions involving ancillary operations. For example, such positions might include weapons maintenance or communications technicians, but would not include recreation specialists or librarians. An employee accepting such a position would be required to be eligible for the incentive pay authorized by this section, to sign an acknowledgement to remain in the position and perform the essential duties during a period of crisis or hostilities.

Subsection (b) would authorize the Secretary or agency head concerned, under regulations prescribed by the Secretary of Defense, to pay incentive pay as described in subsection (c). Incentive pay would be limited to wartime conditions that threaten physical harm or imminent danger to the employee, and further be limited to such a period when the Secretary or agency head concerned, or their designee (e.g. a theater commander), determines that the employee's continued duty performance is vital to U.S. security.

Subsection (c) authorizes the incentive pay to be a pay differential of up to 50 percent of the employee's basic pay. The Secretary or agency head concerned, or their designee, would set the percentage based on the circumstances surrounding the hostilities triggering the section and the necessity for the continued performance of the particular employee. The designation of the position and its value will be addressed prior to hostilities through planning procedures for emergency circumstances.

Subsection (d) authorizes premium pay for essential employees for overtime work. Overtime is considered over 40 hours per week or 8 hours per day. The premium pay is in lieu of overtime pay under chapter 55 of title 5. The employee, however, could elect the title 5 overtime pay or premium pay instead of overtime premium pay under this provision. The provision is intended to address overtime for those essential employees who either are not

authorized any overtime pay or for those who receive premium pay for overtime calculated at the GS 10 rate.

Subsection (a) provides that the instant section is inapplicable to officers and members of a crew whose pay is adjusted under section 5348 of title 5 to reflect prevailing rates of pay that are higher because of the crisis situation that is forming the basis for the incentive authority in the section. This provision ensures against a double benefit for those defense maritime employees who are exempt from normal title 5 pay by section 5102(c)(8) of that title and who could be receiving substantial pay increases because of a crisis situation. This provision provides a choice to the administering official who could either publish new pay rates or administer the incentive pay proposed.

Section 2(b) is a technical amendment that makes the necessary addition to the table of sections at the beginning of Chapter 81.

Section 3 amends section 6304 of title 5, United States Code, to include among the exceptions of that section to the forfeiture of leave for civilian employees a provision that annual leave will not be forfeited if an employee does not take the leave because of the requirement to stay on duty under wartime conditions. The amendment would permit the employee who is required to stay on the job during such a period to accumulate leave and not forfeit leave as a consequence of not taking it.

Section 4 would add a subsection to section 8103 of title 5 to authorize the Secretary of Labor to pay civil service employees from the Employees' Compensation Fund for expenditures necessitated for medical treatment of injuries incurred by an employee under wartime conditions. The reimbursement only would be applicable if the injured essential employee had no other insurance coverage. The Secretary of an armed force or the head of the Defense Agency concerned would make a certification representing the correctness of the payment.

Section 5 would authorize the Secretary of the Treasury to pay from the General Fund the proceeds of an insurance policy of a deceased employee who dies as a result of wartime hostilities during a period when the deceased employee was encouraged to stay on the job and that otherwise are not payable because the policy contains a clause excepting coverage for war related deaths. To obtain the benefits, the beneficiaries must file a claim with the Secretary of the Treasury within two years of the date of death or date of termination of the wartime conditions, whichever is later.

Section 6 is an effective date clause making the provisions of the Act effective upon enactment.